

# **EXHIBIT 3;**

30(b)(6)  
Norfolk Railway - February 19, 2020

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

CSX TRANSPORTATION, INC.,	)	
Individually and on behalf	)	
of NORFOLK & PORTSMOUTH	)	
BELT LINE RAILROAD	)	
COMPANY,	)	
	)	
Plaintiff,	)	
	)	
V.	)	NO. 2:18cv530
	)	
NORFOLK SOUTHERN RAILWAY	)	
COMPANY, NORFOLK &	)	
PORTSMOUTH BELT LINE	)	
RAILROAD COMPANY, JERRY	)	
HALL, THOMAS HURLBUT,	)	
PHILIP MERILLI and CANNON	)	
MOSS,	)	
	)	
Defendants.	)	

30(b)(6) DEPOSITION UPON ORAL EXAMINATION OF  
NORFOLK SOUTHERN RAILWAY COMPANY by its designee  
KENNETH JOYNER  
TAKEN ON BEHALF OF THE PLAINTIFF  
Virginia Beach, Virginia  
February 19, 2020

1           A       No. Unfortunately for Norfolk Southern  
2 there's not a range on the amount that a truck can move  
3 a container.

4                   I guess the key goal as a railroad is  
5 that we need to be competitive with that mode of  
6 transportation, whatever the length of distance is.

7           Q       I understand there may not be a limit on  
8 how far a truck can go, but is it fair to say that most  
9 trucking would occur within a certain geographic range  
10 of the port facility?

11           A       I would say that rail is more competitive  
12 with truck and can more easily compete with truck when  
13 it's a longer haul.

14           Q       And can I ask you to unpack that term  
15 "longer" and, you know, what kinds of distance in your  
16 assessment does rail become a more competitive option  
17 than trucking working out from a port?

18           A       Sure.

19                   Well, just the assets involved to move a  
20 train into an inland point. Initially those first few  
21 miles are quite expensive because you have an engine  
22 and several railcars, amount of diesel fuel, et cetera,  
23 that you have to have on. Once you get over, say,  
24 500 miles in distance, rail is much more -- has a  
25 better chance of competing with truck.

1           Q       And is another way to say that that after  
2       500 miles, rail can be a more efficient option than  
3       using trucking?

4           A       It's fair to say it can be a more  
5       efficient option, but it really depends on the market  
6       conditions at any given time, fuel prices, a variety of  
7       factors. If you're in a soft trucking market, truck  
8       can be -- truck can still be competitive beyond that  
9       distance.

10                   MS. REINHART: Counsel, just to be clear,  
11       are you asking these questions now of him in his  
12       capacity as corporate representative or in his personal  
13       capacity?

14                   MR. HATCH: I'm including both of those  
15       capacities. So if we need to distinguish again for the  
16       answer, please, either the witness or you are welcome  
17       to weigh in. I'm not trying to confuse the record, but  
18       I do ask the questions in both capacities.

19                   MS. REINHART: Okay.

20                   THE WITNESS: The answer I gave is from  
21       my experience in working at Norfolk Southern in this  
22       capacity and that's what I have seen in my time there.  
23       BY MR. HATCH:

24           Q       Okay. Some of the prominent East Coast  
25       ports would include the New York, New Jersey port; is

1 responsibilities after he moved to domestic intermodal?

2 A Amanda Nelson.

3 Q In the time in which you've been in  
4 international intermodal, have occasions come up when  
5 you've worked on rates that you would quote to  
6 customers for business coming out of NIT?

7 A There -- there are occasions where we've  
8 quoted from the Norfolk ports during my tenure, yes,  
9 that my team has.

10 Q Okay. And when you do those quotes, do  
11 you break them out by the different terminals in  
12 Norfolk or is it one quote for any Norfolk related  
13 terminal?

14 MS. REINHART: Objection to the form.

15 THE WITNESS: Any time in our contracts,  
16 it's for Norfolk ports as a whole.

17 BY MR. HATCH:

18 Q So Norfolk Southern would quote one rate  
19 for all of the Norfolk ports; is that correct?

20 A That is correct.

21 Q And that includes NIT, VIG, and the  
22 Portsmouth Marine Terminal or APM?

23 A It would include NIT, VIG, and Portlock,  
24 which is our intermodal terminal.

25 Q Okay. So your rates would not vary that

1 you quote customers among those three facilities you  
2 just described?

3 MS. REINHART: Objection to the form.

4 THE WITNESS: Not that I recall, no.

5 BY MR. HATCH:

6 Q And in the process of calculating the  
7 rate that you would propose to a customer for the  
8 Norfolk ports that we've just described, do you take  
9 into account what CSX you think would charge for that  
10 same service?

11 A We take into account what the market  
12 would bear for that lane, whether it's truck -- it has  
13 to be truck competitive and competitive with our rail  
14 carrier.

15 Q Okay. So can you just describe for me in  
16 some more detail how you factor in what the market will  
17 bear considering those two different competing lines?

18 A The first kind of calculation is prior  
19 experience. In many cases these contracts go on for  
20 years and years. And so the pricing could be based on  
21 what the prior contract was. And if we have been  
22 successfully moving business in the prior contract,  
23 then just continue with maybe some sort of escalator  
24 going forward.

25 Q What if it's new business, how would you